IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

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THE HONOURABLE MR. A.P.SHAH, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

Writ Appeal No. 1333 of 2007
and
M.P.Nos.1 and 2 of 2007

1.R.Muralidaran
2.G.Vasudevan
3.M.R.Santhanam
4.K.Ramanujam
5.V.Mahesh
6.M.Gopinath
7.K.A.Ramasamy ... Appellants/Respondents 2 to 8 in WP.24017/07.

Vs

1. The District Registrar,
South Madras. ..1st Respondent/1st Respondent in WP.24017/07.

2. Sidharth Heights Apartments Owners Association
rep. By its President, S.Ramakrishnan,
No.55, Arcot Road, Saligramam,
Chennai-600 093. ...2nd Respondent/Petitioner in WP.24017/07.

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order in W.P.No.24017 of 2007 dated 12.09.2007 Certiorarified Mandamus, calling for the records relating to the impugned order dated 30.5.2007 in Proceedings No.12615/A1/2006, on the file of the 1st respondent and quash the same and direct the same and to direct the 1st respondent to restore the earlier decision dated 5.3.2007 accepting Form VII containing the change of office bearers in duly convened General Body Meeting held on 28.1.2007 and forbear the first respondent from allowing the Adhoc committee constituted by the respondents 2 to 8 to manage the day-to-day affairs and conducting fresh election on 15.7.2007.

For Appellant :Mr.A.L.Somayaji, S.C., for
M/s.A.V.Bharathi
For Respondents :Mr.P.Raja Kalifulla,
Government Pleader for R1
Mr.J.R.K,Bhavanandam for R2

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V.RAMASUBRAMANIAN, J.

"Siddharth Heights" is a complex of residential apartments comprising of about 113 flats and the owners of these apartments have joined together and formed an Association known as "Siddharth Heights Apartments Owners Association". The said Association was registered under the Tamil Nadu Societies Registration Act, 1975, bearing Sl.No.46 of 2004.

2. On the ground that a new set of office bearers were elected to the society, in an election held on 28.01.2007, Form No.VII under Rule 17(2) of the Tamil Nadu Societies Registration Rules, 1978, was filed with the District Registrar of Societies, South Chennai, on the same day. Later, objections were lodged with the District Registrar on the ground that election was not properly conducted in accordance with the Bye-laws. Therefore, the District Registrar, South Chennai, passed an order dated 30.05.2007, rejecting the Form No.VII filed on 28.01.2007 and directing the conduct of fresh elections.

3. Aggrieved by the said order dated 30.05.2007, passed by the District Registrar, the office bearers, who had filed Form No.VII, came up with the writ petition in W.P.No.24017 of 2007. The said writ petition was disposed of by the learned Judge, by an order dated 12.09.2007, directing the parties to agitate the issues before the Civil Court and also directing both the parties not to operate the bank account, till the matter is taken to the Civil Court. However, the learned Judge also expressed a view that the District Registrar, having accepted Form No.VII at the beginning, on 28.01.2007, ought not to have passed the order dated 30.05.2007 rejecting Form No.VII and directing the conduct of fresh elections. Therefore, challenging the order of the learned Judge, the members of the ad-hoc Committee, who were impleaded as respondents 2 to 8 in the writ petition and at whose instance the District Registrar passed the order impugned in the writ petition, have come up with the present writ appeal.

4. Heard Mr.A.L.Somayaji, learned Senior Counsel for the appellant, Mr.P.Raja Kalifulla, learned Government Pleader for the first respondent and Mr.J.R.K.Bhavanandam, learned counsel for the second respondent.

5. The second respondent Association itself was formed only in February, 2004, and the first set of office bearers was elected in April, 2004. But, they resigned, following some unpleasant incidents. Therefore, an ad-hoc Committee was constituted, which comprised of the appellants herein.

6. In a General Body Meeting held on 24.12.2006, two persons were named as Election Officers to conduct elections on 28.01.2007, but one of the Election Officers declined to act as such. However, the election was purportedly conducted on 28.01.2007 and as

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required by Section 15(1) of the Tamil Nadu Societies Registration Act read with Rule 17(2) of the Tamil Nadu Societies Registration Rules, Form No.VII was filed on the same day, viz., 28.01.2007. This Form No.VII was accepted by the District Registrar.

7. However, a letter of protest was lodged with the District Registrar on 30.01.2007 by the members of the ad-hoc Committee, who are the appellants herein. Similarly, when the newly elected office bearers informed the State Bank of India about their election and their intention to operate the bank account, the appellants lodged a protest with the State Bank of India also. Therefore, the State Bank of India sent a communication to the District Registrar on 05.03.2007 to clarify as to whether the newly elected officer bearers or the ad-hoc Committee, was in charge of the affairs of the Society. In response to the said letter, the District Registrar sent a reply dated 14.03.2007 pointing out that there were lot of irregularities in the conduct of the affairs of the Society and that consequently a Notification had already been published in the Government Gazette under Section 44(2) of the Act for the removal of the name of the Society from the Register. In continuation of the said communication, the District Registrar also wrote another letter dated 26.03.2007 to the State Bank of India informing the bank that an enquiry was being held and requesting the bank not to take any action on the basis of the previous communication dated 14.03.2007 of the District Registrar.

8. Thereafter, the District Registrar passed a detailed order dated 30.05.2007, holding that the elections purportedly held on 28.01.2007 were in violation of the Bye-laws and the Provisions of the Act and the Rules and that therefore, Form No.VII filed and accepted on 28.01.2007 was liable to be rejected. Accordingly, he rejected Form No.VII and directed the Society to convene a general body meeting and elect a new set of office bearers in an appropriate manner.

9. In pursuance of the said order of the District Registrar, the ad-hoc Committee issued a notice on 06.06.2007 for holding the elections on 15.07.2007. In the election schedule so announced, the date for publication of final list of contesting candidates was fixed as 09.07.2007.

10. Thereafter, a fresh Form No.VII was filed with the District Registrar on 16.07.2007 with the names of persons, who were declared elected unopposed.

11. In the meantime, the 2nd respondent herein, who claimed to have been elected as President in the elections purportedly held on 28.01.2007, filed the writ petition, W.P.No.24015 of 2007 (on 12.07.2007) challenging the order of the District Registrar dated 30.05.2007, by which, Form No.VII filed on 28.01.2007 was rejected. The writ petition, as stated earlier, was disposed of, by an order dated 12.09.2007 holding that the order of the District Registrar dated 30.05.2007 was illegal and directing the parties to approach the Civil Court for redressal.

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12. From the above conspectus of facts, two things emerge, viz.,

(a) that there are now two groups of office bearers, who claim to have been duly elected (one group in the election held on 28.01.2007 and another in the elections held on 09.07.2007) and

(b) that each group of persons is assailing the validity of the elections held on the above dates, alleging various violations of the Provisions of the Bye-laws, the Act and the Rules.

Thus, it is seen that disputed questions of fact have arisen in the matter, which cannot really be decided in a writ petition under Article 226 of the Constitution of India.

13. Apart from the fact that disputed questions of fact have arisen, the very maintainability of the writ petition as against the acceptance or rejection of Form No.VII by the District Registrar, is in doubt. Though the scheme of the Tamil Nadu Societies Registration Act, 1975, and the Tamil Nadu Societies Registration Rules, 1978 impose a statutory obligation upon a Society registered under the Act to maintain certain Registers and to file certain returns in the formats prescribed, no corresponding obligation is imposed upon the District Registrar by the Act and the Rules, to adjudicate upon the correctness of such forms. The entire scheme of the Act and the Rules appear to envisage only a ministerial function on the part of the District Registrar, while receiving Form No.VII. In order to understand and appreciate this legal position, it is necessary to look into the various provisions of the Act and the Rules, which mandate the maintenance of Registers and the filing of the forms.

14. Section 6 of the Act makes it compulsory for a Society seeking registration under the Act to file with the Registrar, (i) a Memorandum of Association and (ii) Bye-laws of the Society. Section 10(1) of the Act empowers the Registrar to issue a Certificate of Registration and Section 10(2) requires the Registrar to enter certain particulars in a Register maintained by him, after the issue of the Certificate of Registration. Section 11(1) enables a registered society to change its name, by a Special Resolution, with the approval of the Registrar in writing. Section 11(2) requires the Registrar to enter the new name in the Register and issue a fresh Certificate of Registration. Section 12 enables a registered society to amend its Memorandum and Bye-laws and sub Section (4) of Section 12 requires the Registrar to register the amendment, if he is satisfied that such amendment is not contrary to the provisions of the Act. Section 14(1) of the Act requires every registered society to maintain a Register containing the names, addresses and occupations of its members. Section 15(1) obliges the Society to file a notice of any change among the members of the Society or of the Committee.

15. Section 16(3)(b) requires every Society to file returns, containing an authenticated copy of the receipts and expenditure accounts, balance sheet and report, a statement of details of the members of the Society and a declaration. Section 27 of the Act mandates the Society to file a copy of every Special Resolution passed by a Society.

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16. Section 30 enables two or more registered societies to get amalgamated or a registered society to get divided into two or more Societies, by Special Resolution, with the prior approval of the Registrar. Section 32 declares certain mortgages and charges created by a registered Society, to be void unless the particulars of such mortgage or charge, along with the instrument is filed with the Registrar for registration.

17. Section 34 empowers the Registrar to call for information or explanation relating to any documents filed with him under the provisions of the Act. In other words, Section 34 appears to be the only provision which requires the Registrar to do something in relation to any document or any Form filed with him.

18. Section 34-A deals with the supersession of the Committee of management of a registered society, by the Government. Section 35 empowers the Registrar to inspect the books of every registered society. Section 36 empowers the Registrar to inquire into the affairs of the registered society, either on his own motion or on an application of a majority of the members of the Committee of Management or on the application of not less than 1/3rd of the members or if so, moved by the District Collector. Section 37 deals with the action to be taken by the Registrar in pursuance of the inquiry conducted under Section 36. Section 38 empowers the Registrar to cancel the registration of a society carrying on unlawful activities. Section 40 empowers the Registrar to appoint a Liquidator to wind up a society after the registration of the society is cancelled. Section 44 enables the Registrar to strike off the name of the society from the Register. Section 49 empowers the Registrar to condone the delay in certain cases.

19. Thus, a careful reading of the entire Act shows that the role of the Registrar is clearly defined by the statute in respect of various statutory obligations created under the Act. The functions expected to be performed by the District Registrar have been clearly demarcated into three categories, viz., (a) Ministerial, (b) Administrative and (c) Quasi-judicial. This can be easily appreciated by the language employed, in each of the provisions of the Act, where the Registrar is assigned a role/duty.

20. Wherever the functions of the Registrar are expected to be merely ministerial in nature, the Act and the Rules do not confer any discretion on him and do not expect him to do anything other than merely filing papers and making entries in the Registers. Wherever the functions assigned to the Registrar are expected to be administrative in nature, the Act and the Rules mandate the Registrar to either, "arrive at a satisfaction" or "approve" the action of the registered society. Wherever the Registrar is expected to perform quasi judicial functions, the Act requires him to conduct an inquiry and pass appropriate orders.

21. The following are the provisions, where the Registrar is assigned administrative functions/duties:-

(a) Section 10(1) which empowers the Registrar to issue a

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Certificate of Registration to a Society, "on being satisfied that the Society has complied with the Provisions of the Act".

(b) Section 11(1) which entitles a registered Society to change its name by a Special Resolution, "with the approval in writing of the Registrar".

(c) Section 12(4) which enables the Registrar to register any amendment to the Memorandum or Bye-laws of the Society,"if he is satisfied that such amendment is not contrary to the Provisions of the Act or Rules".

(d) Section 30 which enables two or more registered Societies to get amalgamated or a Society to be divided into two or more Societies, "with the prior approval of the Registrar".

(e) Section 44 which empowers the Registrar to remove defunct Societies from the Register after sending a letter enquiring whether the Society is carrying on business or in operation.

(f) Section 49 which empowers the Registrar to allow extension of time to any registered Society to comply with the provisions of Sections 4(1)and(2), 13(1), 15(2), 16(3) and 27.

Being administrative functions, an element of discretion is vested on the Registrar, under the above provisions of the Act and hence, they are subject to judicial review.

22. The provisions of the Act, which confer quasi judicial powers on the Registrar, are as follows:-

(a) Section 36(1) empowers the Registrar to inquire into the constitution, working and financial condition of a registered Society. Since it is expected to be a quasi judicial enquiry, sub Section (5) of Section 36 treats any order passed under sub Section (4) as a decree of a Civil Court and sub Section (8) empowers the Inquiry Officer to summon any witness or documents.

(b) Section 38(1) empowers the Registrar to cancel the Registration of any Society, if it is found to be carrying on any unlawful activity. The Registrar is obliged to conduct an inquiry into the activities of such Society before cancelling the registration under this Section.

There can be no iota of doubt about the availability of the power of judicial review over these quasi judicial functions conferred on the Registrar.

23. In contrast to the administrative and quasi judicial functions, there are certain functions assigned to the District Registrar, which are merely ministerial in nature and no writ would lie in respect of the ministerial functions so performed by the District Registrar. But what is the test to distinguish a ministerial act/duty from an administrative act/function?

24. A "Ministerial Act" is defined in P.Ramanatha Aiyer's, 'The Law Lexicon', as follows:-

> "Ministerial Act. A ministerial act may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the

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property of the act done."

According to Ballentine's Law dictionary, "Ministerial Duty" means,

> "a duty in regard to which no discretion is left in the officer on whom the duty is imposed, an act which is absolute, certain and imperative involving the mere execution of a set task, the law which imposes it prescribing the time, mode and occasion of its performance with such certainty that nothing remains for judgment or discretion."

Black's Law Dictionary also defines a "Ministerial act" as an "act performed without the independent exercise of discretion or judgment."

25. Applying the above test, it can be safely concluded that the acceptance of forms and returns filed by the registered societies, is nothing but ministerial in nature. This conclusion is inevitable on account of the fact that no element of discretion is conferred upon the Registrar under the Act, while accepting any of the forms/returns.

26. The Appendix to the Tamil Nadu Societies Registration Rules, 1978 contains as may as 10 Forms, which are to be used for various purposes. While Form No.I contains the form of the application to be made for Registration of a Society, Form No.II contains the format of the Certificates of Registration. Form No.III contains the format in which the Registrar is required to maintain a Register of Societies which have been registered under the Act. Form No.IV is the format of an alphabetical index to be maintained in respect of societies registered in each calendar year. Form No.V contains the format in which the notice of the situation of the Registered Office of the Society and any change thereto, is to be filed. Form No.VI prescribes the format in which a society is obliged to maintain a Register of Members. Form No.VII prescribes the format in which a notice of any change among the members of the society or of the committee is to be filed with the Registrar. Form No.VIII and Form No.IX prescribe the particulars of any charge created on the property of the society and the mortgage or charge subject to which a property was acquired by a society. Form No.X contains the form of certificate to be issued by the Registrar, whenever the committee of a registered society is superseded and a Special Officer appointed.

27. Thus it is seen that some of the Forms prescribed in the Appendix are in the nature of certificates, some of them are in the nature of registers to be maintained and a few of them are in the nature of notices to be filed by the Societies with the Registrar.

28. Out of the 10 forms prescribed in the Appendix, Form No.V and VII alone are in the nature of notices. While Form No.V is a notice of location of the Registered Office of the Society and it is required to be filed within three months, by virtue Rule 15 of the Tamil Nadu Societies Registration Rules, 1978, Form No.VII is a

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notice of the change among the members of the society or of the committee and it is required to be filed within three months from the date of such change, by virtue of Rule 17(2) of the aforesaid Rules.

29. It is seen that the requirement under Rule 17(2) for filing Form No.VII stems out of the requirement under Section 15 of the Act. Section 15 reads as follows:-

> "15.Committee.-
>
> (1) Every registered Society shall have a committee of not less than three members to manage its affairs. Every registered society shall file with the Registrar a copy of the register maintained by it under sub-section (1) of Section 14 and from time to time, file with the Registrar notice of any change among the members of the Committee.
>
> (2) A copy of the register shall be filed either at the time of the registration of the society or within such period as may be prescribed from the appointment of the members of the first committee and the notice of any change among the members of the society or the committee shall be filed within such period as may be prescribed from the date of such change.
>
> (3) The members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat.
>
> (4) The term of office of the members of committee shall not exceed three years from the date of their appointment.
>
> (5) The members of the committee shall be eligible for reappointment.

Rule 17 of the Tamil Nadu Societies Registration Rules, reads as follows:-

> 17. Filing of copy of the register of members and notice of change of members or committee.-
>
> (1) A copy of the register of members maintained by the society under sub-section (1) of Section 14, if not filed at the time of registration of the society, shall be filed with the Registrar within one month from the date of registration of the society.
>
> (2) The notice of any change among the members of the society or of the committee shall be filed in Form No.VII within [three months] from the date of

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such change. The notice of change among the members of the committee shall be accompanied by the resolution of the meeting, if any, effecting such change."

30. It is seen from the language in which Section 15 of the Act and Rule 17 of the Rules is couched that there is a statutory obligation cast upon the society to file Form No.VII within the time limit prescribed thereto. The Act or Rules do not envisage any corresponding statutory duty or responsibility on the part of the Registrar of Societies while accepting Form V or Form VII filed under the Act. Therefore, it appears that what the Registrar does while accepting the forms, is only a ministerial act of receiving the form, scrutinising the same to the extent necessary to verify the correctness of the particulars contained therein and registering the same. In other words, the Registrar does no more job than that of the Registrar of Companies accepting Form No.32 or Form No.34 under the Companies Act, 1956.

31. The above conclusion also derives support from the Provisions of Section 34 of the Act, which reads as follows:-

"34. Power of Registrar to call for information or explanation.-

(1) Where the Registrar, on perusal of any document which a registered society is required to file with him under the provisions of this Act, is of opinion that any information or explanation is necessary with respect to any matter to which such document purports to relate, he may, by order in writing, call on the registered society filing the document to furnish in writing such information or explanation within such time as he may specify in the order.

(2) On receipt by the registered society of an order under sub-section (1), it shall be the duty of all persons who are or have been its officers to furnish such information or explanation to the best of their power.

(3) On receipt of such information or explanation, the Registrar, may annex the same to the original document filed with him and any additional document so annexed by the Registrar shall be subject to the like provisions as to inspection and the taking of copies, as the original documents is subject."

32. From a bare reading of Sub Section (1) of Section 34, it is clear that the only obligation cast upon the Registrar, upon receipt of any document or Form filed under the Act, is to call for any further information or explanation in respect of any matter, to which, such document relates to. Sub Section (3) makes it still more clear by prescribing that the Registrar may annex such

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information or explanation to the original document filed with him. Therefore, if Form No.VII is filed with the Registrar, as required by Section 15(1) of the Act read with Rule 17(2) of the Rules, all that the Registrar can do is only to call for further information or explanation under Section 34(1) and keep the information or explanation received by him as an annexure to the original document. This is nothing but a mere ministerial function and hence, it cannot be challenged by way of a writ petition under Article 226 of the Constitution of India.

33. In any event, the filing of Form No.VII is only a consequential action to an election purportedly conducted. The acceptance of such a Form by the Registrar would neither affix a seal of approval on the validity of the election nor would the rejection of Form No.VII by the Registrar, invalidate an election properly conducted. Therefore, a person, who is aggrieved by an election, should only go before a Civil Court challenging the election. A person aggrieved by an election cannot challenge the acceptance or rejection of Form No.VII by the Registrar as a short cut to invalidate an election. This is why the Full Bench of this Court, in C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee -vs- The District Registrar, Cheranmahadevi and four others (2005-2- L.W. 550), held that the power under Section 34 is only incidental and that it was only for the purpose of maintaining correct records. Paragraph No.18 of the Judgement of the Full Bench reads as follows:-

> "18. The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of Section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. The Power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the Writ Jurisdiction."

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34. As seen from paragraph No.18 of the judgement of the Full

Bench extracted above, the Full Bench dealt with the power of the Registrar both under Section 36 and under Section 34. Since Section 36 empowers the Registrar to conduct an inquiry, the Full Bench concluded in paragraph No.18 that the exercise of such power by the Registrar should not be arbitrary as the orders passed by the Registrar would be amenable to challenge in writ jurisdiction. But insofar as the power under Section 34 is concerned, the Registrar is not expected to conduct any enquiry except to call for additional information or explanation and that too, just for the purpose of filing it as annexure to the original document. This is why the Full Bench held that the power of the Registrar is incidental and that it is only for the purpose of maintaining correct records.

35. That the Registrar has a power to conduct an inquiry only under Section 36 and not under Section 34, while receiving Form VII, is made clear by the conclusion reached by the Full Bench in paragraph No.20. Paragraph No.20 of the judgement of the Full Bench reads as follows:-

> "20. As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form VII, the provision of Sub-Section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of the Registrar to issue such direction under Sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to the power under Section 37 to cancel the registration. Hence, the power under Sub-Section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very

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well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act as per the orders of the Civil Court. Accordingly, the issue is answered."

36. In fact, the Full Bench has gone to the extent of holding that the Registrar has no power to direct a Society to hold fresh election, even while invoking the jurisdiction under Section 36 of the Act. It is made clear by the Full Bench that an election can be set at naught only by the Civil Court in a suit and not even in an inquiry under Section 36. The necessary corollary of such a conclusion by the Full Bench is that what is not possible even in an inquiry under Section 36, cannot be made possible while receiving Form No.VII and looking into it under Section 34. Therefore the acceptance or rejection of Form No.VII and the action of the Registrar in calling for additional information or explanation under Section 34 is a mere ministerial act, not amenable to the writ jurisdiction of this Court. Therefore, the writ petition, out of which, the present appeal arises, is itself not maintainable.

37. When a similar situation arose with regard to the acceptance and registration of Form No.32 by the Registrar of Companies under the Provisions of the Companies Act, 1956, a Division Bench of the Delhi High Court considered the role of the Registrar of Companies, while accepting Form No.32, in S.K.Battacharya and another -vs- Union of India [1998 (Vol.91) Company Cases (Delhi) 37]. It is useful to extract the relevant portion of the judgement of the Division Bench of the Delhi High court, as follows:-

"Form No.32 is required to be submitted pursuant to the requirement of sub-section (2) of section 303 of the Act as regards particulars of appointment of directors and manager and changes amongst them. Sub-section (1) of section 303 requires a company to maintain a register at its registered office containing all pertinent information about the directors, managing director, manager and secretary. The first part of sub-section (2) of Section 303 requires every company to send to the Registrar a return in duplicate containing the particulars specified in the register referred to in clause (a) of sub-section (1) thereof. It also enjoins upon the company to communicate to the Registrar the changes amongst the directors, managing directors, managers or secretaries, specifying the change of

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date. Form No.32 in Appendix-I is the prescribed form for the purpose. Section 306 of the Act says that the Registrar shall keep a separate register or registers in which entries of the particulars received by him under sub-section (2) of section 303 in respect of the companies shall be made, which shall be open for inspection to any member of public at any time during office hours on payment of the prescribed fee.

The Company Law Board is the authority competent to take decisions on the affairs of the company. No doubt the order passed in C.P.No.30 of 1993, is the subject matter of appeal, but for the purpose of the present petition, suffice it to observe that the mere acceptance and registration of Form No.32 by the Registrar could not have prejudiced the case of the petitioners in any proceedings before the competent authorities, since, as observed above, acceptance of the form by the Registrar is only a ministerial act."

38. After holding so, the Delhi High Court refused any relief to the writ petitioner, even though there were allegations that the Registrar of Companies did not follow the guidelines issued by the Ministry of Law, Justice and Company Affairs, while acting on Form No.32 filed by the rival parties.

39. Therefore, we hold that a writ would not lie against any ministerial act performed by the Registrar of Societies under the Provisions of the Tamil Nadu Societies Registration Act, including the acceptance or rejection of Form No.VII. Whenever Form No. VII is filed, the District Registrar can only call for further information/explanation and file the same along with the Form under Section 34 and he is not entitled to adjudicate any dispute. Therefore, the direction issued by the District Registrar in his order dated 30.05.2007 holding the elections held on 28.01.2007 to be invalid and directing the parties to go in for fresh election, cannot be sustained, on account of the fact that he exercised a jurisdiction not vested in him by law while accepting Form VII.

40. In view of the above, the writ appeal is allowed and the order of the learned Judge dated 12.09.2007 passed in W.P.No.24017 of 2007 is set aside and the writ petition filed by the second respondent is dismissed. However, it is open to the appellants as well as the second respondent to approach the Civil Court with regard to the validity of the elections held either on 28.01.2007 or on 09/15.07.2007. It is further made clear that if the parties choose to approach the Civil Court, the Civil Court should deal with the matter independently on merits without reference to any order passed by the Registrar of Societies either on 28.01.2007 or on 30.05.2007, since the Registrar had no powers to go into the

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validity of the elections or to issue a direction to hold fresh elections. The writ appeal is allowed on the above terms.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

bs/

To
1. The District Registrar,
South Madras.

+ 1 CC To Mr. A.V.Bharathi, Advocate SR NO.75502

+ 1 CC To Mr. J.R.K.Bhavanantham, Advocate SR NO.75736

W.A.No.1333 of 2007

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